

MINUTES OF THE REGULAR MEETING OF JANUARY 28, 2016

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 28, 2016 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Michael Johnson, Mr. Rodney Smith, Mr. I.G. Burton, and Mr. Marty Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Ms. Janelle Cornwell – Planning and Zoning Manager and Mr. Daniel Brandewie – Planner II.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of January 14, 2016 as circulated. Motion carried 5 – 0.

OLD BUSINESS

C/Z #1790 – Carillon Square Apartments, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from a C-1 (General Commercial District) to an AR-1 (Agricultural Residential District) for a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 8.66 acres, more or less. The property is located 520 feet west of John J. Williams Highway (Route 24) and 1,200 feet south of Indian Mission Road (Route 5). (911 Address: None Available) Tax Map I.D. 234-23.00-269.13 (part of) and 269.15 (part of).

The Commission discussed this application which has been deferred since January 14, 2016.

Mr. Johnson stated that he would like to get Mr. Ross' input on the applications for C/Z #1790 and C/Z #1791 so that Mr. Ross can participate in the decision.

Mr. Ross stated that he would review the record and the tape for both applications.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

C/Z #1791 – Carillon Square Apartments, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) and a C-1 (General Commercial District) to a HR-1 (High Density Residential District) for a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 17.19 acres, more or less. The property is located southwest of Indian Mission Road (Route 5) and 500 feet west of John J. Williams Highway (Route 24). (911 Address: None Available). Tax Map I.D. 234-23.00-260.00 & 269.18 (part of).

The Commission discussed this application which has been deferred since January 14, 2016.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 5 - 0.

PUBLIC HEARINGS

Mr. Robertson described the process for public hearings.

C/Z #1792 – Ray C. & Candice E. Sammons

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from a C-1 (General Commercial District) to an AR-1 (Agricultural Residential District) for a certain parcel of land lying and being in Seaford Hundred, Sussex County, containing 20,833 square feet, more or less. This property is located at the southwest corner of Oak Grove Road (Road 549B) and North Oak Grove Road (Road 549) (911 Address: 2568 Oak Grove Road, Seaford) Tax Map I.D. 531-8.00-26.01.

Mr. Lank advised that Commission that DelDOT comments were not requested since this application is a downzoning from C-1 General Commercial to AR-1 Agricultural Residential.

The Commission found that the County Engineering Department Utility Planning Division provided comments on January 27, 2016 in the form of a memorandum advising that the property is located in the Western Sussex Planning Area #3; that use of an on-site septic system is proposed; that conformity to the Western Sussex Planning Study will be required; that the property is not in an area where the County has a schedule to provide sewer at this time; and that a concept plan is not required.

The Commission found that Ray C. Sammons and Candice E. Sammons were present on behalf of their application and stated that the property was originally rezoned to C-1 General Commercial so that he could operate his heating and air conditioning business; that the business has been closed since 1993; that they have been advised that if they sold the property the buyers would be required to obtain a commercial loan since the property was zoned commercially; that there would be no negative impact on the community by rezoning this property since all of the properties in the area are zoned AR-1 Agricultural Residential; and that the area is predominantly used either agriculturally or residentially.

The Commission found that there were no parties present in support of or in opposition to this application.

At the conclusion of the public hearings, the Commission discussed this application.

Mr. Smith stated that he would move that the Commission recommend approval of Change of Zone No. 1792 for Ray C. and Candice E. Sammons for a downzoning from C-1 General Commercial to AR-1 Agricultural Residential based on the record made during the public hearing and for the following reasons:

- 1) The property is surrounded by AR-1 Agricultural Residential lands, and rezoning this parcel to AR-1 Agricultural Residential will make it consistent with the area zoning.
- 2) The property was previously rezoned to C-1 General Commercial by the applicants for their business. That business no longer exists, so there is no reason to continue with C-1 General Commercial zoning on this property.
- 3) The property is only 20,833 square feet in size. It would be very difficult to develop this property commercially given the size of it. AR-1 Agricultural Residential zoning is more appropriate for a parcel of this size.
- 4) The rezoning will not adversely affect area properties or roadways. Downzoning it to AR-1 Agricultural Residential should have a positive impact on the area.
- 5) No parties appeared in opposition to this application.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 5 – 0.

C/U #2040 – Sposato Imports

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for an expansion of Conditional Use No. 1474 (landscaping business) to utilize a warehouse for the storage of wine to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 10.109 acres, more or less. The property is located east of Hudson Road (Road 258) and 1,720 feet south of Eagles Crest Road (Road 264) (911 Address: 16181 Hudson Road, Milton) Tax Map I.D. 235-22.00-21.01.

The Commission found that the applicant submitted a copy of the survey of the property relating to the original application for the landscaping business, sketches of the site location, the location of the warehouse as it relates to the other buildings on the site, and the building.

Mr. Lank advised the Commission that Conditional Use No. 1474 was approved by County Council on January 14, 2003 with seven (7) conditions of approval.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report on February 23, 2015 referencing that a traffic impact study is not recommended, and that the current Level of Service of Hudson Road will not change as a result of this application.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a memorandum on January 27, 2016 referencing that the property is located in the North Coastal Planning Area; that an on-site septic system is required; that conformity to the North Coastal Planning Area Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that David and Karen Sposato were present and stated in their presentation that they are proposing to import bottled and labeled Argentina wines that will be stored in a warehouse on their property; that the warehouse will be temperature controlled; that the wines will be shipped directly from the site to their distributor; that they anticipate one stake

body truck, similar to a UPS or Fed-Ex vehicle, per week in and out; that there will not be any retail sales; that no signage is necessary; that they have not met with the neighbors; and that delivery and pick-up hours would be from 7:00 a.m. to 3:30 p.m.

The Commission found that there were no parties present in support of or in opposition to the application.

At the conclusion of the public hearings, the Commission discussed this application.

Mr. Burton stated that he would move that the Commission recommend approval of Conditional Use No. 2040 for Sposato Imports for the expansion of an existing Conditional Use for a landscaping business to allow the storage of wine based upon the record made during the public hearing and for the following reasons:

- 1) The use is currently operated as a landscaping business.
- 2) The proposed use will be located in an existing building on the premises.
- 3) The use will generate very little additional traffic beyond what currently exists with the landscaping business.
- 4) The expansion will not adversely affect neighboring properties or roadways.
- 5) The applicant has stated that they are asking for the ability to store wine only. They have stated that there will not be any retail sales from the site.
- 6) No parties appeared in opposition to the application.
- 7) This recommendation is subject to the following conditions:
 - A. No retail sales shall occur from the site.
 - B. No additional signage shall be permitted.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 5 – 0.

C/U #2041 – Scott Randall Witzke

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for a retail auto sales to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 10.0 acres, more or less. The property is located north of Delmar Road (Route 54) 0.5 mile west of Horsey Church Road (Road 510) (911 Address: 8137 Delmar Road, Delmar) Tax Map I.D. 532-19.00-7.00.

The Commission found that the applicant provided a copy of surveys of the property and a cover letter explaining the application when the application was filed.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report on October 28, 2015 referencing that a Traffic Impact Study was not recommended, and that the current Level of Service of Delmar Road (Route 54) will not change as a result of this application.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a memorandum on January 27, 2016 referencing that the

property is located in the Western Sussex Planning Area #4; that on-site septic is required; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that Scott Witzke was present and stated in his presentation that the 10 acre parcel is a part of a larger 43 acre farm; that there are no immediate neighbors to the site proposed for vehicle display; that he will only occasionally display vehicles for sale; that most of the vehicles are sold over the internet; that he will comply with the display codes; that he will not display more than five (5) vehicles at any one time; that there will be no more than ten (10) vehicles stored on the site for sale; that the vehicles will only be displayed during daylight hours; that he will be selling both automobiles and trucks; that no auto repair work will be performed on the vehicles; that he will not be selling automotive parts; and that signage will not exceed 32 square feet per side.

The Commission found that there were no parties present in support of or in opposition to this application.

At the conclusion of the public hearing, the Commission discussed this application.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

C/U #2042 – Beachfire Brewing Company, LLC

An Ordinance to grant a Conditional Use of land in a C-1 (General Commercial District) for a microbrewery to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 5,000 square feet, more or less. The property is located at the southeast corner of Central Avenue and Johnston Street (911 Address: 19841 Central Avenue, Rehoboth Beach) Tax Map I.D. 334-13.20-24.00.

The Commission found that the applicant provided a survey of the property showing the existing pole building and gravel parking area on the site.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report on October 28, 2015 referencing that a Traffic Impact Study was not recommended and that the current Level of Service of Road 273 (Hebron Road) will not change as a result of this application.

The Commission found that the County Engineering Department Utility Planning Division provided comments on January 27, 2016 referencing that the property is located in the West Rehoboth Expansion Area; that wastewater capacity is available based upon the assumption that the total equivalent dwelling unit (EDU) sewer assessment does not exceed 4.0 EDUs; that the actual EDU assessment for the proposed use as a brewery is not known; that Ordinance 38 construction will not be required; that the current System Connection Charge Rate is \$5,775.00 per EDU; that the parcel is served with a 6-inch lateral located along the parcel frontage on Johnston Street and the applicant's Engineer/Architect shall determine whether sufficient

capacity is provided or the installation of an 8-inch lateral shall be required; that installation of a larger lateral shall be performed at the applicant's expense; that conformity to the North Coastal Planning Study will be required; that a concept plan is not required; that Best Management Practices or Industrial Permit is required; that in order to determine whether a Best Management Practices or Industrial Permit is required, the applicant shall complete an Industrial Waste Program Survey and Questionnaire; that the application can be obtained from and submitted to the Director of Utility Permits; that the applicant shall submit said survey and questionnaire prior to requesting a building permit; that the applicant will be advised of the appropriate application fee due after permit type is determined; and that the applicant shall anticipate providing a sampling port and flow meter as part of the distillery process plumbing.

Mr. Lank advised the Commission that the Department has received seven (7) letters in support of the application from immediate neighbors and area residents. Copies of the letters were provided for the Commission for review.

The Commission found that Harold Dukes, Esquire of Tunnell & Raysor, P.A. was present on behalf of Beachfire Brewing Company, LLC with Harry Metcalfe and Patrick Staggs of Beachfire Brewing Company, LLC and that they stated in their presentation and in response to questions raised by the Commission that the site is already improved by a pole building containing 1,500 square feet with a bathroom; that their primary intent is to establish a research developmental facility for testing and tasting of distilled flavors of craft beers; that the site is zoned C-1 General Commercial; that they are proposing a small tasting room containing approximately 390 square feet of public space with seating for 20 clients/customers; that they anticipate processing 37 barrels of craft beer per month, which is only 11% of a typical brewpub licensed application; that spent grains from the processing/distilling operation will be shipped or picked up by a local farmer; that flow meters have already been installed; that the site is just off of the bike trail and that they hope to attract some of the cyclist coming off of the trail; that bike racks will be installed; that deliveries will be at a minimum; that there will be limited distribution from this location since it is intended to be a testing facility; that once they get their product line established they hope to create a production facility at a larger site more centralized in the County; that there are several storage and warehouse facilities in the immediate area; that they anticipate a minimal amount of traffic; that one of the partners has a background in the brewing business; that they have established financial backing; that they are not aware of any proposed residential units being planned in the general area; that they have received several letters in support of the application from neighbors and area residents; that a restaurant could have been built on the site without a public hearing; that they will have two (2) brewers and one (1) maintenance employee on site; that entry access will be from Central Avenue; that the parking lot is already paved; that the only outside improvements will be the propane tanks; that business hours for the tasting room will be from 11:00 a.m. to midnight six (6) days per week during the summer season, and three (3) to (4) days per week during the off season; that brewing will be performed daily/year round; that the facility will be a full service micro-brewery as brewed on-site; that signage will only be on the building; that the outside appearance of the building will appear to be a warehouse; and that they will be using a steam-boiler with no odors discharged outside.

The Commission found that Brenda Melbourne and Reverend Janet Maull Martin were present in opposition and expressed concerns about the impact on the community and the children in the community; that several children live in close proximity to the building; that they oppose the intended tasting use; that they are concerned about truck traffic; that the Commission should defer or deny to allow the applicants to meet with the residents of the area; that the building appeared overnight; that no one in the neighborhood knew what was going to take place on the property; that it is a case involving alcohol and a tasting room in a microbrewery and will impact a residential community; that a recent proposal for a microbrewery in Dewey Beach had that application rejected by local residents and the Town Council until a compromise was reached; that that application was on a major artery road where bars already exists; that the applicants are proposing a brewery pub and that traffic to the brewery pub will impact Central Avenue in the West Rehoboth area; that Central Avenue contains a small cluster of homes with five (5) families with nine (9) children; that Central Avenue is only a short block away from Hebron Road; that there are a few business establishments on Hebron Road, but they are not high traffic retail operations; that the applicants did not contact local residents about their plans, except for the family that they have helped with water; that the applicants have not contacted the West Side New Beginning Board; and that the applicants should have taken the time to meet with the residents to establish a good community relationship and understanding of the concerns from the residents of the West Rehoboth area.

The Commission found that Tim Cottor was present, not in opposition, but with concerns about odors and the impact on the proposed Henlopen Station expansion; questioning the use of a temporary facility; that he has concerns about noises; and that he has no objection to the tasting room.

The Commission found that Patrick Staggs, a partner and brewer, in response to questions raised by the Commission, stated that noise is minimal, an internal pump noise that should not be heard outside of the building; that there should not be any odors outside; that spent grains will be picked up daily by a local farmer; that the equipment is state-of-the art with modern technologies; that cleanliness improves quality; that their purpose and intent is to create flavors for testing; that some neighbors have stopped by and introduced themselves, and voiced no objections; and that they have met several of the neighbors.

The Commission found that Harold Dukes, in response to questions raised by the Commission, stated that the immediate neighbors, who have children, were notified and have voiced no objections.

The Commission found that Brenda Melbourne requested to ask a question and was permitted, questioning if children are allowed in the tasting room; and advising the Commission that Carol Hazzard, the neighbor across the street, was not notified of the application.

The Commission found that Harry Metcalfe advised them that a tasting room serves samplings of craft brews that are created on the premises; that their proposal is not a sit down and drink all day bar, it is a microbrewery in a 1,500 square foot building with a tasting room which has 12 stools, and 2 table that seat 4 people; that there are no outside speakers; and that children are allowed in the tasting room, but not allowed to seat at the bar.

At the conclusion of the public hearing, the Commission discussed this application.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

OTHER BUSINESS

2015-5 C. Elmer & Edith Marine

Final Subdivision

Ms. Cornwell advised the Commission that this is a final subdivision for the creation of one (1) parcel of land with a residual parcel. The major subdivision was required as the property exceeded the number of lots permitted off a private road. The Planning Commission granted preliminary approval on November 12, 2015. The Planning Commission had also granted a waiver from the street design requirements. The property is zoned AR-1 and is located off of Marine Road off of Line Road. The tax map parcel is 531-14.00-12.00. The Planning Office is in receipt of agency approvals.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the Final Subdivision Plan. Motion carried 5-0.

Harris Teeter at Americana Bayside

Revised Site Plan

Mr. Brandewie advised the Commission that this is a revised site plan to convert a portion of the existing parking area for the grocery store into gas pumps with a canopy. The site complies with the required number of parking spaces. The existing parking spaces are being relocated. The site is part of the Americana Bayside RPC development. The property is located at the southeast corner of Lighthouse Road (Route 54) and Americana Parkway. The tax map parcel is 533-19.00-17.02.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the revised site plan with final site plan approval subject to staff upon receipt of agency approvals. Motion carried 5-0.

Herbert Properties, LLC on Donovan Road

Preliminary Site Plan

Mr. Brandewie advised the Commission that this site plan is to develop a 0.91 +/- acre portion of a 56 +/- acre site for use as a used car showroom/retail sales and auto repair facility. Two structures consisting of a combined 14,800 sq. ft. are proposed to house these two activities. The plan provides sufficient parking and it will be served with on-site water and sewer services. The remaining portion of the property will be put under a conservation easement. The property is located on Donovan's Road across from an auto salvage yard near the Penn Central railroad corridor. The tax map parcel is 135-14.00-104.00 and is zoned LI-2 (Light Industrial-2).

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the preliminary site plan with final site plan approval subject to staff upon receipt of agency approvals. Motion carried 5-0.

Cellco Partnership – Lands of Martin off East Trap Pond Road.
Preliminary Site Plan

Ms. Cornwell advised the Commission that this is a preliminary site plan for the construction of a cell tower and equipment compound. The Board of Adjustment granted a Special Use exception for the use as a cell tower at their meeting on October 19, 2015. The site plan complies with the requirements for the construction of a cell tower and equipment compound. The property is located on the northwest side of East Trap Pond Road. The tax map parcel is 133-1.00-3.00. Staff is in receipt of the Fire Marshal approval. The site requires approval from the Sussex Conservation District and DelDOT.

Motion by Mr. Ross, seconded by Mr. Smith and carried unanimously to approve the preliminary site plan with final site plan approval subject to staff upon receipt of agency approvals. Motion carried 5-0.

Lands of Poe on Epworth Church Road
Minor subdivision off of a 50 ft. private road

Ms. Cornwell advised the Commission that this is a minor subdivision to create one (1) parcel of land with a residual to be located off an existing 50 ft. easement. Proposed lot 1A will have frontage along Epworth Church Road, however, the residual will only have frontage along the 50 ft. easement. Any further subdivision shall require a major subdivision as this proposed subdivision maximizes the number of lots permitted off of an easement. The property is zoned AR-1 and is located on the northwest corner of Epworth Church Road and Saddleup Circle. The tax map parcel is 530-15.00-10.00. Staff is awaiting approval from DelDOT.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the minor subdivision of one (1) parcel of land with a residual with any further subdivision requiring a major subdivision. Motion carried 5-0.

Lands of Derrickson on Lisa Avenue
Minor subdivision off 50 ft. private road

Ms. Cornwell advised the Commission that this is a minor subdivision to create one (1) parcel of land with a residual to be located off an existing private road. This lot is located within an existing subdivision. The Planning Office is in receipt of a document containing the signatures of more than 50% of the property owners within the subdivision acknowledging the proposed subdivision. The property is zoned MR and is located on the southwest corner of Lisa Avenue and Club House Road. The tax map parcel is 134-12.00-135.07. Staff is in receipt of DelDOT approval.

Motion by Mr. Smith, seconded by Mr. Burton and carried unanimously to approve minor subdivision of one (1) parcel of land with a residual with any further subdivision requiring a major subdivision with final plan approval subject to staff upon receipt of agency approvals. Motion carried 5-0.

Lands of Conaway off Wilson Road

Minor subdivision off of a 50 ft. private road

Ms. Cornwell advised the Commission that this is a minor subdivision to create one (1) parcel of land with a residual off an existing private road. The Planning Commission previously approved a minor subdivision for the creation of one (1) parcels with a private road for this property. Any further subdivision shall require a major subdivision. The property is zoned AR-1 and is located on the south side of Wilson Road. The tax map parcel is 135-10.00-3.00. Staff is awaiting approval from DelDOT.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve minor subdivision of one (1) parcel of land with any further subdivision requiring a major subdivision with final plan approval subject to staff upon receipt of agency approvals. Motion carried 5-0.

Benson Subdivision

Request to waive TAC requirement for a major subdivision

Ms. Cornwell advised the Commission that this is a request to waive the requirement that a new subdivision go through the Technical Advisory Committee (TAC) process. The applicant is proposing to submit the same subdivision plan that was previously approved and expired on December 31, 2015. The applicant has active DelDOT and Sussex Conservation District approvals, however, the record plan expired. If the waiver for the TAC process is granted the applicant will submit a new preliminary subdivision plan for consideration by the Planning Commission at a later date.

There was discussion regarding that the subdivision expired on December 31, 2015 and a time extension was not requested as the applicant believed that they would be under substantial construction prior to the end of the year. This subdivision is an unusual situation as the road are intended to be State maintained. The applicant is looking to resubmit the same plan that was previously approved and would like to move the process forward. This process will not apply to other plans that expired as this is a unique situation.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the waiver of the Technical Advisory Committee requirements based on the fact that the subdivision was designed to state standards and with DelDOT approval in place. Motion carried 5-0.

ADDITIONAL BUSINESS

Mr. Lank advised the Commission that on January 12, 2016 and January 26, 2016 the Sussex County Council considered time extension requests that were submitted by developers; and that there were two requests, The Arbors at Cottage Dale and Sunset Ventures, that had previously been granted extensions which had their extensions confirmed; 24 applications that were granted extensions, and 12 applications that were rejected by the County Council. The time extensions granted and confirmed are valid until July 1, 2016.

Meeting adjourned at 8:14pm.